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No. 88-2051

IN THE

Supreme Court of the United States

October Term, 1988

LONGVIEW FIBRE COMPANY,

Petitioner,

vs.

JEANNETTE PAPER COMPANY,

Respondent.

REPLY BRIEF OF PETITIONER

MICHAEL J. BETTS, ESQUIRE
REED SMITH SHAW & McCLAY
435 Sixth Avenue
Pittsburgh, Pennsylvania 15219
(412) 288-3010
Counsel for Petitioner
Longview Fibre Company

Batavia Times Publishing Co.
Batavia, N.Y. (716) 344-2000

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This Court held in *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*, 57 U.S.L.W. 4985 (June 26, 1989), that the Excessive Fines Clause of the Eighth Amendment does not apply to awards of punitive damages in private actions. In a concurring opinion joined by Justice Marshall, Justice Brennan emphasized that *Browning-Ferris* "leaves the door open for a holding that the Due Process Clause constrains the imposition of punitive damages in civil cases brought by private parties." 57 U.S.L.W. at 4991. *See also Bankers Life & Casualty Co. v. Crenshaw*, 108 S.Ct. 1645, 1656 (1988),

where Justice O'Connor, joined by Justice Scalia, observed that a grant of standardless discretion on the part of the jury to award punitive damages "appears inconsistent with due process." In the present case, as in *Browning-Ferris* and *Bankers Life*, punitive damages were imposed by a jury that, in violation of due process, was possessed of limitless discretion and was provided no meaningful standards by which to determine whether to award punitive damages and, if so, the appropriate amount thereof.

The reasons that warrant this Court's grant of certiorari are set forth in Longview's Petition for Writ of Certiorari. In this Reply Brief, Petitioner addresses the contention of Respondent that Petitioner has failed to preserve its constitutional challenges to the punitive damages award.

I. Petitioner Properly Preserved its Constitutional Challenges to the Punitive Damages Award.

Respondent's contention that Petitioner failed to preserve its constitutional challenges to the award of punitive damages does not withstand scrutiny. Under the standards set forth by this Court in *Browning-Ferris, Bankers Life* and *Hathorn v. Lavorn*, 457 U.S. 255 (1982), the constitutional issues were sufficiently presented to the Pennsylvania state courts and were properly preserved for this Court's review.

Despite the repeated assertions in Respondent's Brief that Petitioner failed to raise its constitutional challenges before the Superior Court of Pennsylvania, the Brief filed by Petitioner with the Superior Court expressly argued that the punitive damages award violates the United States Constitution, including the Due Process Clause of the Fourteenth Amendment:

> Longview . . . contends that the award of punitive damages violates its federal constitutional rights under the Excessive Fines Clause of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment, and its rights under Article 1, Section 13 of the Pennsylvania Constitution, since, *inter alia*, the amount of the award is grossly disproportionate to Jeannette's actual damages, if any, and is vastly greater than any criminal penalties prescribed by the Pennsylvania legislature for conduct such as that allegedly involved in this case. Longview notes that the United States Supreme Court is addressing several of those constitutional challenges in the case of *Bankers Life & Casualty Co. v. Crenshaw*, No. 85-1765, which was argued to the Court on November 30, 1987. 56 U.S.L.W. 3398.

Jeannette Paper Co. v. Longview Fibre Co., Brief for Appellant, filed with the Superior Court of Pennsylvania on January 4, 1988, at 67 n.45.

Moreover, following this Court's grant of certiorari in *Browning-Ferris,* Petitioner filed an Application for Reconsideration of Denial of Allowance of Appeal with the Supreme Court of Pennsylvania. In that Application, Petitioner set forth the specific ways in which the award of punitive damages violates the United States Constitution, including the assertion that "the standards under which the award of punitive damages were made were vague, indefinite and unclear, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution."[1]

Finally, Petitioner expressly raised each of its constitutional arguments, including the contention that the punitive damages award violates the Due Process Clause, in its Petition for Writ of Certiorari.

Under the standards applied by this court, Petitioner preserved its constitutional challenges to the punitive damages award. In *Browning-Ferris,* review of the punitive damages award on Due Process grounds was denied "[b]ecause petitioners failed to raise their due process argument before either the District Court or the Court of Appeals, and made no specific mention of it in their petition for certiorari in this Court." 57 U.S.L.W. at 4990. In the present case, in contrast to *Browning-Ferris,* Petitioner presented its constitutional arguments to the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania and specifically raised each constitutional violation in the Petition for Writ of Certiorari filed with this Court.

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[1] Petitioner's Application, filed with the Supreme Court of Pennsylvania on March 27, 1989, is appended hereto at 1a-3a.

In *Bankers Life*, this Court declined to address the constitutionality of an award of punitive damages, but observed that the constitutional issues would have been preserved if they had been raised in the petition for rehearing that was filed with the Mississippi Supreme Court:

> Appellant maintains that it raised its various challenges to the size of the punitive damages award in its petition for rehearing before the Mississippi Supreme Court. In urging us to entertain the claims, appellant relies on our decision in *Hathorn v. Lavorn*, 457 U.S. 255, 262-65, 72 L.Ed.2d 824, 102 S.Ct. 2421 (1982), in which we accepted certiorari jurisdiction of claims that were raised, but not passed upon, in the Mississippi Supreme Court on petition for rehearing. *Hathorn* would be apposite were we to conclude that appellant had adequately raised its claims on rehearing. But appellant's petition for rehearing alleged only that the punitive damage award "was clearly excessive, not reasonably related to any legitimate purpose, constitutes excessive fine, and violates constitutional principles." App. to Juris Statement 139a. The vague appeal to constitutional principles does not preserve appellant's Contract Clause or due process claim.

Bankers Life, 108 S.Ct. at 1650. In contrast, Petitioner in the present case specifically raised each of its constitutional challenges in its Application for Reconsideration filed with the Supreme Court of Pennsylvania (as well as in the Brief filed earlier by Petitioner with the Superior Court of Pennsylvania).

Conclusion

Petitioner has preserved its claims that the award of punitive damages violates the United States Constitution, including the Due Process Clause of the Fourteenth Amendment. The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

MICHAEL J. BETTS, ESQUIRE
REED SMITH SHAW & McCLAY
435 Sixth Avenue
Pittsburgh, Pennsylvania 15219
(412) 288-3010
Counsel for Petitioner
Longview Fibre Company

ADDENDUM

Application for Reconsideration of Denial of Allowance of Appeal

In the Supreme Court
of Pennsylvania

No. 572 W.D.
Allocatur Docket 1988

JEANNETTE PAPER COMPANY,
Respondent,

vs.

LONGVIEW FIBRE COMPANY,
Petitioner.

Petitioner, Longview Fibre Company, by its undersigned attorneys, hereby applies for reconsideration of the denial of its Petition for Allowance of Appeal, pursuant to Rule 1123 of the Pennsylvania Rules of Appellate Procedure. Longview states as follows in support of this Application:

1. This action arises out of a dispute between Jeannette Paper Company, a paper broker, and Longview Fibre Company, a paper manufacturer, concerning whether an oral brokerage contract was entered into in 1983.

2. At trial, the jury returned a verdict against Longview on Jeannette's claims for breach of contract and interference with contractual relations and awarded compensatory damages of $244,000 and punitive damages of $500,000 to Jeannette.

3. Longview appealed the trial court's judgment to the Superior Court, which affirmed the judgment by Order and Opinion dated September 26, 1988.

4. On October 26, 1988, Longview filed a Petition for Allowance of Appeal with this Court. Longview's Petition was denied by this Court on March 20, 1989.

5. Subsequent to the filing of Longview's Petition for Allowance of Appeal, the United States Supreme Court granted certiorari in the case of *Browning-Ferris Industries v. Kelco Disposal*, 57 U.S.L.W. 3394 (Dec. 5, 1988), to address the constitutionality of an award of punitive damages in that case. The Supreme Court's decision in *Browning-Ferris* may impact on the constitutionality of the punitive damages award against Longview in the present case.

6. Longview submits that the award of $500,000 of punitive damages against it violates the United States Constitution because:

a. the award of punitive damages is excessive and disproportionate to Longview's conduct, in violation of the Excessive Fines Clause of the Eighth Amendment to the United States Constitution;

b. the standards under which the award of punitive damages were made were vague, indefinite and unclear, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

c. the award of punitive damages was imposed in the absence of the procedural safeguards to which Longview was entitled under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution;

d. the imposition of the award of punitive damages was based on the "preponderance of the evidence" standard, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

e. the award of punitive damages violates the requirement of fundamental fairness contained in the Fourteenth Amendment to the United States Constitution; and

f. the award of punitive damages violates the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

WHEREFORE, Longview respectfully requests that this Court reconsider its denial of Longview's Petition for Allowance of Appeal and allow an appeal from the decision of the Superior Court. In the alternative, Longview requests that further proceedings in the case be stayed, pending the decision of the United States Supreme Court in *Browning-Ferris*.

Respectfully submitted,

REED SMITH SHAW & McCLAY
Mellon Square
435 Sixth Avenue
Pittsburgh, Pennsylvania 15219
By /s/ MICHAEL J. BETTS
Attorneys for Petitioner
Longview Fibre Company

Certificate of Counsel

Pursuant to Rule 1123(b)(2) of the Pennsylvania Rules of Appellate Procedure, the undersigned counsel hereby certifies that the foregoing Application is presented in good faith and not for delay and that the grounds set forth in the Application arise out of intervening circumstances of substantial or controlling effect.

/s/ MICHAEL J. BETTS
Michael J. Betts